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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM E. SHORT,

Defendant and Appellant.

A132984

(Mendocino County  
Super. Ct. No. CR1015974)

Defendant William E. Short appeals from a judgment sentencing him to five years in prison following his guilty plea to one count of assault with intent to commit rape (Pen. Code, § 220, subd. (a)(1)),<sup>1</sup> one count of inflicting injury on an elder (§ 368, subd. (b)) and one count of false imprisonment of an elder (§§ 368, subd. (f), 236, 237, subd. (b)). He contends that his sentence was imposed in violation of section 654. We shall affirm.

**Factual and Procedural History**

The following evidence was presented at the preliminary hearing: Early in the morning of December 17, 2010, the 76-year-old victim was awakened by her barking dog. Hearing something in her closet, she tried to open the door. At first it would not open, but then the door flew open and defendant was standing in front of her. She

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted. As noted by defendant, the amended abstract of judgment erroneously indicates that defendant was convicted under “section 220(A)(1)(B).” Accordingly, we direct the trial court to correct the clerical error in the abstract of judgment.

screamed and defendant put his hand over her mouth, struck her two or three times in the face and knocked her to the ground. She tried to get up but defendant told her to stay on the floor and not to look at him. Then defendant picked her up and forced her to lay face down on the bed. Defendant's body was pressing against her, pinning her to the bed and she felt defendant start to undo his pants. She offered defendant money, but he refused and said that he did not want money. She repeatedly asked defendant not to hurt her. Shortly thereafter, defendant got up and said, "I'm sorry. I didn't know you were an old lady. I'm sorry. My wife is pregnant. I'm sorry." He asked "How do I get out of here?" and she told him to go out the front door.

Following his guilty plea, the court sentenced defendant to the midterm of four years on the conviction for assault with intent to commit rape, and a consecutive one-year term on the conviction for inflicting injury on an elder adult. The court imposed and stayed a term of one year on the false imprisonment conviction. Defendant filed a timely notice of appeal.

### **Discussion**

Section 654 prohibits multiple punishment when the same "act or omission" or an indivisible course of conduct violates two or more criminal statutes. (§ 654, subd. (a); *People v. Deloza* (1998) 18 Cal.4th 585, 591.) If two or more offenses are committed pursuant to a single intent and objective, the defendant can be punished for only one of the offenses. (*People v. Britt* (2004) 32 Cal.4th 944, 951–952.) The application of section 654 thus "turns on the *defendant's* objective in violating" multiple statutory provisions. (*Id.* at p. 952.) Where the commission of one offense is merely " 'a means toward the objective of the commission of the other,' " section 654 prohibits separate punishments for the two offenses. (*Id.* at p. 953.) The defendant's intent and objective are factual determinations for the trial court, and those determinations must be upheld if supported by substantial evidence. (*People v. Green* (1996) 50 Cal.App.4th 1076, 1085.) "We review the trial court's findings 'in a light most favorable to the respondent and presume in support of the order the existence of every fact the trier could reasonably deduce from the evidence.' " (*Ibid.*)

Defendant contends the court violated section 654 by imposing consecutive sentences for the assault with intent to commit rape and inflicting injury to an elder. He argues that the “entire incident only lasted a few minutes and all of [his] conduct was incident to one objective, the attempted rape.” The trial court, however, found that the initial assault outside the closet (when defendant hit the victim multiple times and knocked her to the ground) and the subsequent assault with the intent to commit rape (when he forcibly moved her to the bed, held her down and attempted to unbutton his pants) were incident to different objectives. The court explained, “Because as I understood the facts here first, Mr. Short is behind the door in the closet and he’s on one side holding the knob and [the victim] is on the other side holding the knob. And it winds up in a face-to-face confrontation. [¶] Then he strikes her—strikes her more than once, she goes down to the ground. And from that point forward there’s a sort of—sort of a command to get on the bed and he forces her on to the bed.” The court agreed with defendant that the false imprisonment and assault with intent to commit rape served the same objective but observed that “attempting to rape someone is . . . independent of smacking them two or three times in the face.”

The Attorney General suggests that the court could reasonably have inferred “that the initial assault was in response to being discovered and was not part of an intent to commit a sexual offense. [Defendant] could have initially struck the victim simply because he was in a stressful situation and wanted the victim to stop screaming. He might have wanted to facilitate an escape, or prevent the victim from obtaining a weapon or assistance for someone else who could have been within the house.” The victim’s testimony arguably supports such an inference. The victim testified at the preliminary hearing that when defendant came out of the closet she was “hollering” and he kept telling her, “Be quiet. Just be quiet.” She said, “he kept . . . trying to put his hands over my mouth and telling me not to scream.” On balance, we cannot say that the inferences drawn by the trial court from the limited evidence available was unreasonable.

*People v. Pena* (1992) 7 Cal.App.4th 1294, relied upon by defendant, is distinguishable. In that case, the court held that defendant could not be sentenced

separately for burglary and rape where “nothing indicates [defendant] had any objective to commit theft or any other crime other than rape and forcible oral copulation.” (*Id.* at p. 1312.) The court explained that “the victim’s own testimony indicates appellant had but one criminal objective when he entered her home . . . —sexual assault.” (*Ibid.*) In contrast, the record in the present case does not necessarily establish that defendant’s conduct served such a singular purpose. Whatever defendant’s motives for entering the victim’s house, the trial court reasonably concluded that, once inside, defendant acted with multiple motives.<sup>2</sup> (See *People v. Wynn* (2010) 184 Cal.App.4th 1210, 1216 [section 654 did not bar separate sentences on burglary and assault convictions where “substantial evidence supports a finding that [defendant’s] objective during the *burglary* was to obtain the cigarettes, but his objective during the *assault* was to avoid being arrested for the theft”]; *People v. Galvez* (2011) 195 Cal.App.4th 1253, 1263 [section 654 did not bar separate sentences on defendant’s convictions for assault and attempting to dissuade a witness where the assault involved distinct acts of violence and it was reasonable to infer from the evidence that the objective of the assault “was to enhance the gang’s reputation for violence, not to dissuade or prevent him from using his cell phone to call the police”].)

### **Disposition**

As corrected, the judgment is affirmed.

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<sup>2</sup> Defendant also cites *People v. John* (1983) 149 Cal.App.3d 798. In that case, the defendant argued that section 654 barred separate punishment for his robbery and burglary convictions. (*Id.* at p. 811.) Relying on the Attorney General’s concession that the facts established an indivisible course of conduct on the part of defendant directed toward the objective of robbing the victim, the court remanded the action for resentencing. (*Ibid.*) As discussed above, the evidence in the present case does not establish a similar indivisible course of conduct by the defendant.

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Pollak, J.

We concur:

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McGuiness, P. J.

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Siggins, J.